

SHIVAPPA

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v.

STATE OF KARNATAKA

NOVEMBER 29, 1994

[DR. A.S. ANAND AND M.K. MUKHERJEE, JJ.]

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Criminal Procedure Code, 1973—Section 164—Confession—Evidentiary value—Voluntary statement—Recording of confessional statement—Duty of Magistrate—Inquiry by Magistrate to ascertain voluntary nature of confession—Rule of strict compliance with imperative requirements of Section 164—Non-compliance renders confession unworthy of credence.

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Indian Penal Code, 1860—Section 302—Conviction based on confession made u/s 164 Cr.P.C.—Cryptic manner of holding enquiry to ascertain voluntary nature of confession—Confessional statement required to be ruled out of consideration to determine guilt—Conviction not sustainable.

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The appellant along with five others were tried for various offences in connection with the murder of the husband of A1. The appellant was convicted u/s 302 Indian Penal Code. The confessional statement of the appellant, recorded u/s 164 Cr.P.C. was the only piece of evidence on which the trial court relied upon and convicted the appellant. The High Court upheld the conviction holding that the confessional statement, even though retracted at a later stage, was voluntary and true and held that the trial court had rightly relied upon the same. The submission made on behalf of the appellant that the confessional statement recorded by the Magistrate was neither voluntary nor true and trustworthy was repelled.

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This appeal by special leave has been filed against the order of the High Court upholding his conviction and sentence for the offence u/s 302 IPC.

Allowing the appeal, this Court

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HELD : 1.1. A confession, if voluntary and truthfully made is an “efficacious proof of guilt”. Unless the Court is satisfied that the confession is voluntary in nature, it cannot be acted upon and no further enquiry as to whether it is true and trustworthy need be made.

[176 C, E] H

A 1.2. From the plain language of Section 164 Cr.P.C. and the Rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under Section 164 Cr.P.C., is manifest that the said provisions emphasise an enquiry by the Magistrate to ascertain the *voluntary* nature of the confession. This enquiry appears to be the most significant and an important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 Cr.P.C. The failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same. Full and adequate compliance not merely in form but in essence with

B the provisions of S.164 Cr.P.C. and the Rules framed by the High Court is imperative and its non-compliance goes to the root of the magistrates jurisdiction to record the confession and renders the confession unworthy of credence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the

C treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the magistrate discovers on such enquiry that there is ground for such supposition he should give the accused sufficient time for reflection before he is asked to make his

D statement and should assure himself that during the time of reflection, he is completely out of police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self interest in course of the trial, even if he contrives subsequently to retract the confession. Besides administering the caution of warning specifically provided for in the first part of sub-section (2) of Section 164 namely, that the accused is not bound to make a statement and that if he makes one it may be used against him as evidence in relation to his complicity in the offence at the trial that is to follow, he should also, in plain language be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement

E F G and be given an assurance that even if he declined to make the confession, he shall not be remanded to police custody.

[176 F to H, 177 A, to D]

H 1.3. The Magistrate who is entrusted with the duty of recording confession of an accused coming from police custody or jail custody must appreciate his function in that behalf as one of a judicial officer

and he must apply his judicial mind to ascertain and satisfy his conscience that the statement the accused makes is not on account of any extraneous influence on him. That indeed is the essence of a 'voluntary' statement within the meaning of the provisions of Section 164 Cr.P.C. and the Rules framed by the High Court for the guidance of the subordinate courts. Moreover, the Magistrate must not only be satisfied as to the voluntary character of the statement, he should also make and leave such material on the record in proof of the compliance with the imperative requirements of the statutory provisions, as would satisfy the court that sits in judgment in the case, that the confessional statement was made by the accused voluntarily and the provisions are strictly complied with. [177 E to F]

1.4. In the instant case, the evidence on record does not establish that the confessional statement of the appellant recorded under Section 164 was voluntary. The cryptic manner of holding the enquiry to ascertain the voluntary nature of the confession has left much to be desired and has detracted materially from the evidentiary value of the confessional statement. It would, thus, neither be prudent nor safe to act upon the confessional statement of the appellant. Under these circumstances, the confessional statement was required to be ruled out of consideration to determine the guilt of the appellant. Both the trial court and the High Court, which convicted the appellant only on the basis of the so called confessional statement of the appellant fell in complete error in placing reliance upon that statement and convicting the appellant on the basis thereof. Since, the confessional statement of the appellant is the only piece of evidence relied upon by the prosecution to connect the appellant with the crime, his conviction cannot be sustained. [178 F to H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 38 of 1992.

From the Judgment and Order dated 20-21/9/90 of the Karnataka High Court in Crl. A. No. 837 of 1988.

C.S. Srinivasa Rao for the Appellant.

M. Veerappa for the Respondent.

The Judgment of the Court was delivered by

A DR. ANAND, J. This appeal, by special leave, has been filed by Shivappa S/o Bundappa who was accused No. 2 in the trial court and appellant No. 2 in the High Court and is directed against the order of the High Court of Karnataka dated 21st September, 1990 upholding his conviction and sentence for the offence under Section 302 IPC. The appellant along with Smt. Sudha (A1) and four others were tried for various B offences in connection with the murder of Suresh Singh on 4.12.1986 at about 3.00 a.m.

According to the prosecution case Smt. Sudha (A1) was working as a Nurse in the primary health centre at Ullagaddi Khanapur. She was married to the deceased Suresh Singh. The deceased used to live at Belgaum but C used to visit his wife, A1, at Ullagadi Khanapur, where she was working, quite often. The appellant Shivappa was working as a Health Guide at the primary health centre at Ullagaddi Khanapur. The husband of Sudha was addicted to drinking and there used to be frequent quarrels between the couple. In order to raise money for buying liquor, the deceased used to sell D household articles, if he could not get cash from his wife. The deceased also suspected his wife to be having illicit relations with Ramchanda Hanamant Pujari (A4) who was working as a Basic Health Worker and with Dr. Ashok Madhukar (A6), who was working as a Medical Officer at the primary health centre Ullagaddi Khanapur at the relevant time. The deceased, after consuming liquor, shortly before the day of occurrence went to the house of E A4 and accusing him of having illicit relations with his wife (A1) abused him. He thereafter went to the house of A6 and abused him also in the presence of some of his patients accusing him that he was having illicit relations with his wife. On account of these accusations, the relations between the deceased, A1, A4 and A6 had become strained. These three accused alongwith the appellant, A3 and A5 used to meet and discuss the F behaviour of the deceased. It is alleged that on 10.10.1985, the appellant alongwith A4, A5 and A6 met in the Gotur Inspection Bungalow and hatched a conspiracy to do away with the deceased by causing his murder. It was planned that the murder would be committed during the night and the dead body would be thrown on the Poona-Bangalore road to give it the G complexion of an accident. It was also decided that A1 would thereafter file a complaint with the police saying that her husband had died in a motor accident and when the dead body would be brought for post-mortem examination before the Medical Officer, A6, he would certify that the death had been caused by an accident. On 2.12.1985, the appellant alongwith A1, A4 and A5 worked out the plan for committing the murder of the deceased. On 3.12.1985 the deceased came to visit his wife, A1 at Ullagadi, H Khanapur. As per the plan in the early hours of the morning of 4.12.1985,

A3 went to the house of A1 and asked her to come for a delivery case. A1 alongwith her husband (deceased) and A3 went towards Henchinal and on the way the appellant, alongwith A4 and A5 met them. A4 informed A1 and A3 that the patient had already delivered the baby and they could go back to their house. Thereupon, the appellant alongwith A1, A3, A4, A5 and the deceased proceeded towards Ullagaddi Khanapur. When they had reached near the footpath leading from Henchinal cross to Ullagaddi Khanapur, the deceased was caught hold of by A1 to A5. A rope was tied round the neck of the deceased and his wife A1 pulled the rope thereby causing the death of the deceased. As per the original plan, the dead body was brought and laid on Poona-Bangalore road. To lend authenticity to the story of an accident, A1 went to the house of PW2, located nearby, to bring water telling him about the accident of her husband. Thereafter, she prepared the complaint Exh. P-52 and went to the police station at 7.15 a.m. and lodged the report with PW18, the Incharge of the police station. An FIR in crime case No. 221/85 for the offence punishable under Section 279/304 A IPC and Section 89 of the Motor Vehicles Act was registered on the basis of the said complaint. The dead body was sent for post-mortem examination to A6. However, A6 informed PW18 that the case being a complicated one, the post-mortem examination may be got done through some other doctor. Consequently, a requisition was made to the Medical Officer, Primary Health Centre, Daddi to get the post-mortem of the dead body conducted. The investigating officer, during the course of investigation recorded the statements of various witnesses. After the receipt of the post-mortem report, which disclosed that the death had not been caused as a result of injuries received in any road accident, the viscera of the deceased was sent for chemical examination to Bangalore. After the receipt of the post-mortem report an offence under Section 302 IPC was registered. It was during further investigation that A1 volunteered to show the place where offence had been committed and later on the appellant volunteered to show the place where the rope had been burnt. Both A1 and the appellant also volunteered to make confessional statements. The investigating officer PW25 sent a request report to the Judicial Magistrate, 1st Class, Hukkeri to record the confessional statements of A1 and the appellant. The appellant was produced before the Magistrate on 21.7.1986 and the Magistrate adjourned the recording of the statement till 22.7.1986, so that the appellant could reflect in the meantime. The appellant was remanded to the sub-jail after the Magistrate had recorded preliminary statement of the appellant after asking him various questions. The confessional statement of the appellant was thereafter recorded by the Magistrate PW17 on 22.7.1986. Six weeks later appellant retracted the same by addressing a communication Ex. D1 to the Magistrate.

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A The confessional statement of the appellant, recorded under Section 164 Cr.P.C. by PW17 on 22.7.1986, was the only piece of evidence on which the trial court relied upon and convicted the appellant. In the High Court, the submission made on behalf of the appellant that the confessional statement recorded by PW17 was neither voluntary nor true and trustworthy was repelled. The High Court found that the confessional statement, even though retracted at a later stage, was voluntary and true and held that the trial court had rightly relied upon the same. Consequently, the conviction and sentence of the appellant for the offence under Section 302 IPC was upheld. Hence this appeal.

We have heard learned counsel for the parties.

C The only piece of evidence relied upon against the appellant is the confessional statement recorded by PW17 on 22.7.1986. A confession, if voluntary and truthfully made is an "efficacious proof of guilt." It is an important piece of evidence and therefore it would be necessary to examine whether or not the confession made by the appellant was voluntary, true and trustworthy. The statutory provisions dealing with the recording of confessions and statements by the Metropolitan Magistrate and Judicial Magistrates are contained in Section 164 Cr.P.C. and the Rules framed by the High Court containing guidelines for recording of confessions. Unless the Court is satisfied that the confession is voluntary in nature, it cannot be acted upon and no further enquiry as to whether it is true and trustworthy need be made.

F From the plain language of Section 164 Cr.P.C. and the Rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under Section 164 Cr.P.C., is manifest that the said provisions emphasise an inquiry by the Magistrate to ascertain the *voluntary* nature of the confession. This inquiry appears to be the most significant and an important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 Cr.P.C. The failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same. Full and adequate compliance not merely in form but in essence with the provisions of Section 164 Cr.P.C. and the Rules framed by the High Court is imperative and its non-compliance goes to the root of the magistrates jurisdiction to record the confession and renders the confession unworthy of credence. Before proceeding to record the confessional statement, a searching enquiry must be made from the

accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the magistrate discovers on such enquiry that there is ground for such supposition he should give the accused sufficient time for reflection before he is asked to make his statement and should assure himself that during the time of reflection, he is completely out of police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self interest in course of the trial, even if he contrives subsequently to retract the confession. Besides administering the caution warning specifically provided for in the first part of sub-section (2) of Section 164 namely, that the accused is not bound to make a statement and that if he makes one it may be used against him as evidence in relation to his complicity in the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement and be given the assurance that even if he declined to make the confession, he shall not be remanded to police custody.

The Magistrate who is entrusted with the duty of recording confession of an accused coming from police custody or jail custody must appreciate his function in that behalf as one of a judicial officer and he must apply his judicial mind to ascertain and satisfy his conscience that the statement the accused makes is not on account of any extraneous influence on him. That indeed is the essence of a 'voluntary' statement within the meaning of the provisions of Section 164 Cr.P.C. and the Rules framed by the High Court for the guidance of the subordinate courts. Moreover, the Magistrate must not only be satisfied as to the voluntary character of the statement, he should also make and leave such material on the record in proof of the compliance with the imperative requirements of the statutory provisions, as would satisfy the court that sits in judgment in the case, that the confessional statement was made by the accused voluntarily and the statutory provisions were strictly complied with.

From a perusal of the evidence of PW17, Shri Shitappa, Addl. Munsif - Magistrate, we find that though he had administered the caution to the appellant that he was not bound to make a statement and that if he did make a statement that may be used against him as evidence but PW17 did not disclose to the appellant *that he was a Magistrate* and that the confession was being recorded by him in that capacity nor made any enquiry to find

A out whether he had been influenced by any one to make the confession. PW17 stated during his deposition in court "I have not stated to the accused that I am a Magistrate" - and further admitted "I have not asked the accused as to whether the police have induced them (Chithavani) to give the statement". The Magistrate PW17 also admitted that "at the time of recording the statement of the accused no police or police official were in the open court. *I cannot tell as to whether the police or police official were present in the vicinity of the court.*" From the memorandum prepared by the Munsif Magistrate PW17 as also from his deposition recorded in court it is further revealed that the Magistrate *did not lend any assurance to the appellant that he would not be sent back to the police custody in case he did not make the confessional statement.* Circle Police Inspector Shivappa Shanwar PW25 admitted that the sub-jail, the office of the Circle Police Inspector and the Police Station, are situated in the *same premises*. No contemporaneous record has been placed on the record to show that the appellant had actually been kept in the sub jail, as ordered by the Magistrate on 21-7-1986 and that he was out of the zone of influence by the police keeping in view the location of the sub-jail and the police station. The prosecution did not lead any evidence to show that any jail authority actually produced the appellant on 22-7-1986 before the Magistrate. That apart, *neither on 21-7-1986 nor on 22-7-1986 did the Munsif Magistrate PW17 question the appellant as to why he wanted to make the confession or as to what had prompted him to make the confession.* It appears to us quite obvious that the Munsif Magistrate PW17 did not make any serious attempt to ascertain the voluntary character of the confessional statement. The failure of the Magistrate to make a real endeavour to ascertain the voluntary character of the confession, impels us to hold that the evidence on the record does not establish that the confessional statement of the appellant recorded under Section 164 Cr.P.C. was voluntary. The cryptic manner of holding the enquiry to ascertain the voluntary nature of the confession has left much to be desired and has detracted materially from the evidentiary value of the confessional statement. It would, thus, neither be prudent nor safe to act upon the confessional statement of the appellant. Under these circumstances, the confessional statement was required to be ruled out of consideration to determine the guilt of the appellant. Both the trial court and the High Court, which convicted the appellant *only* on the basis of the so called confessional statement of the appellant, fell in complete error in placing reliance upon that statement and convicting the appellant on the basis thereof. Since, the confessional statement of the appellant is the only piece of evidence relied upon by the prosecution to connect the appellant with the crime, his conviction cannot be sustained.

This appeal, consequently, succeeds and is allowed. The conviction and sentence of the appellant is set aside. The appellant is directed to be released from custody forthwith unless required in any other case. A

A.G.

Appeal allowed.